For Information Only

Election Compliance Audit Committee

Presented To:	Finance and Administration Committee
Presented:	Tuesday, Apr 17, 2018
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Type:	Correspondence for Information Only

Resolution

For Information Only

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters.

Report Summary

This report updates Council on the changes made to the Municipal Elections Act since 2014 in regards to the Election Compliance Audit Committee, and the process for recruiting and appointing three citizens to the Election Compliance Audit Committee for the term between December 1, 2018 to November 30, 2022.

Financial Implications

There are no financial implications associated with this report.

Signed By

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Executive Summary

The purpose of this report is to provide information to Council on the legislative requirement to appoint persons to an Election Compliance Audit Committee for the upcoming municipal election, and to provide information on the recent changes made to the *Municipal Elections Act* pertaining to the operation and mandate of Election Compliance Audit Committees.

Background

In 2009, Bill 212, "An Act to Promote Good Government", was passed by the Ontario legislature, which amended the *Municipal Elections Act* and made it mandatory that all municipalities and local boards appoint an Election Compliance Audit Committee prior to October 1st of each election year.

The Election Compliance Audit Committee is not a Committee of Council in the ordinary sense of Committees established by Council under the authority of the *Municipal Act*. The primary difference is that the Election Audit Compliance Committee is completely independent and is granted specific decision making powers under the Municipal Elections Act. Decisions of the committee are not subject to ratification by Council and may be appealed to the Superior Court of Justice within 15 days after the decision is made.

Any eligible elector who believes on reasonable grounds that a candidate has contravened a provision of the *Municipal Elections Act* relating to election campaign finances may apply after the election for a compliance audit of the candidate's election campaign finances. Applications for a compliance audit must be made to the City Clerk within 90 days after the latest of the following dates:

1) The filing date under section 88.30;
2) The date the candidate filed a financial statement, if the statement was filed within 30 days after the applicable filing date under section 88.30;
3) The candidate's supplementary filing date, if any, under section 88.30;
4) The date on which the candidate's extension, if any, under subsection 88.23 (6) expires.

Additionally, there are new regulations in the *Municipal Elections Act* governing the spending of registered third parties. Some of these new regulations pertain to the Election Audit Compliance Committee. Similar to the process used for

candidates, any eligible elector who believes on reasonable grounds that a registered third party who is registered in relation to the election in the municipality has contravened a provision of the *Municipal Elections Act* relating to campaign finances may apply for a compliance audit of the campaign finances of the registered third party. Applications for a compliance audit must be made to the City Clerk within 90 days after the latest of the following dates:

1) The filing date under section 88.30;
2) The date the registered third party filed a financial statement, if the statement was filed within 30 days after the applicable filing date under section 88.30;
3) The registered third party's supplementary filing date, if any, under section 88.30;
4) The date on which the registered third party's extension, if any, under subsection 88.27 (3) expires.

The powers and functions of the Election Compliance Audit Committee are detailed in section 88 of the *Municipal Elections Act*, and can be summarized as follows:

- Consider a compliance audit application received from an elector in regards to a candidate or a registered third party, and decide if it should be granted or rejected.
- If the application is granted, appoint an auditor licensed under the *Public Accounting Act*, 2004.
- Receive and consider the auditor's report
- Decide whether to commence a legal proceeding against a candidate and/or registered third party for an apparent contravention

Recent Changes to the Municipal Elections Act

There have been a number of changes made to the *Municipal Elections Act* since 2014, which will affect the Election Compliance Audit Committee in the upcoming term.

One legislative change that has been made to the *Municipal Elections Act* since the last election pertains to the recovery of costs from an applicant. Previously, if the Election Compliance Audit Committee's report indicated that there was no apparent contravention and the committee found that there were no reasonable grounds for the application, the council or local board was

entitled to recover the auditor's costs from the applicant. However, in the most recent version of the legislation, this provision has been removed and there is no similar provision to allow for the recovery of costs from an applicant.

Another legislative change that has been made to the *Municipal Elections Act* since the 2014 election pertains to the committee's decision on an application. Once the committee has made the decision to grant or reject an application, they must now provide brief written reasons for their decision, and provide those to the candidate, the clerk, and the applicant. This new requirement is found in section 88.33(8) of the *Act*. Previously there was no requirement for the committee to provide any written reasons for their decisions.

A further change relates to how the meetings of the election compliance audit committee are held. The new provisions of the *Act* still provide that the meetings of the Election Compliance Audit Committee shall be open to the public, but now allow deliberations in private.

Composition of the Committee

For the 2010 municipal election, Council appointed three citizens and one alternate to the Committee. This process was followed again for the 2014 municipal election, and again a committee of three citizens and one alternate was chosen. This composition has been successful for the 2010 and 2014 municipal elections and staff will proceed with a similarly constituted committee for the upcoming 2018 election. The committee members in the past have been paid a $200 per diem, and this amount will be used again for the upcoming term.

The City of Greater Sudbury will begin to advertise for citizens to sit on the Election Compliance Audit Committee shortly for the term from 2018 to 2022. The opportunity will be advertised in the media, circulated to professional bodies representing regulated professions and posted on the CGS website. To ensure no potential conflicts, each of the applicants will be required to sign a statement agreeing not to prepare or audit the election financial statements of any candidate for office in the Municipal or School Board elections in the Greater Sudbury area, or for any registered third parties, and stating that they were neither a candidate, nor a member of an election campaign team.

As the Election Compliance Audit Committee may be asked to review applications pertaining to members of Council, the last two Councils wished to minimize potential conflicts and had a staff group, comprising of management staff from Clerks Services and Finance, complete a review of applicants and recommend appointments to Council. The same process will be followed in 2018 unless Council directs otherwise.

The committee requires individuals with the ability to work independently with minimal guidance from CGS staff, as staff would be in a conflict situation if the application concerned a sitting member of Council. Because of these powers and because the Committee has the ability to retain auditors and commence legal proceedings without consultation with staff, the municipality is seeking very specific, professional skill sets from the Committee members.

The applicants will be interviewed over the summer and the interviews will be constructed to ascertain how each applicant demonstrates:

- Experience in receiving and understanding financial information, preferably with knowledge and understanding of municipal election financing rules;
- Experience working in a profession that imposes professional standards on its members, where breach of those standards may lead to discipline
- Analytical and decision making skills;
- Experience working on a committee, task force, tribunal, disciplinary panel or similar body;
- Excellent written and oral communication skills.

A report will be presented to Council in September of 2018 with regards to the recommended appointees to the Election Compliance Audit Committee for the term December 1, 2018 - November 30, 2022.

Resource Links

Municipal Elections Act
https://www.ontario.ca/laws/statute/96m32

Municipal Election - Creation of a Compliance Audit Committee, Report presented May 14, 2010:
http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=254&itemid=2597&lang=en

Election Compliance Audit Committee – Nominees, Report presented September 14, 2010:
http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=260&itemid=3393&lang=en

Election Compliance Audit Committee, Report presented May 27, 2014:
http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=722&itemid=8691&lang=en

Election Compliance Audit Committee, Report presented September 9, 2014:
http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=786&itemid=8942&lang=en